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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Deployment of Wireline Services Offering) CC Docket Nos. 98-147, et al.
Advanced Telecommunications Capability)

OPPOSITION OF CTSI, INC.

CTSI, Inc. respectfully submits this opposition to the petitions for reconsideration filed by SBC Communications, Inc.¹ ("SBC") and Bell Atlantic, Inc.² ("BA") of the Commission's *Advanced Service Order* issued in this proceeding.³

CTSI is a competitive local exchange carrier ("CLEC"), currently operating in Pennsylvania and New York providing local exchange services over its own facilities and over Bell Atlantic's ("BA") unbundled loops. CTSI is also certificated to provide local exchange services in Maryland. Because SBC and BA distort the Commission's reasoning in the *Advanced Service Order*, CTSI urges the Commission to deny the Petitions and uphold its previous findings. The Commission's determination that incumbent local exchange carriers

¹ Petition for Reconsideration of SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, filed September 8, 1998 ("SBC Petition").

² Petition of Bell Atlantic for Partial Reconsideration or, Alternatively, for Clarification, filed September 8, 1998 ("Bell Atlantic Petition").

³ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services*, CC Docket No. 98-11, *Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service*, CC Docket No. 98-91, Memorandum Opinion and Order, FCC 98-188, released August 7, 1998 ("*Advanced Service Order*").

("ILECs") must provide "conditioned" loops does not violate the Eighth Circuit decision in *Iowa Utilities Board*. Moreover, the Commission correctly rejected the ILEC claims that it should use Section 706 of the 1996 Act to allow ILECs to provide advanced services without complying with the core competitive provisions of the 1996 Act. The Commission should decline to modify both of these rulings.

I. The Loop Conditioning Requirement Is Not Inconsistent With the Eighth Circuit Decision

In the *Advanced Service Order*, the Commission noted that it is essential to the provision of advanced telecommunications services that CLECs have access to loops conditioned to provide those services.⁴ Specifically, the Commission ruled that if a carrier specifies that it "requires a loop free of loading coils, bridged taps, and other electronic impediments, the incumbent must condition the loop to those specifications, subject only to considerations of technical feasibility."⁵ Moreover, the Commission determined that the ILEC may not deny such a request on the ground that it does not itself offer advanced services over the loop.

SBC and BA contend that this requirement violates the Eighth Circuit Decision in *Iowa Utilities Board*.⁶ The Petitions argue that the Eighth Circuit prohibited the Commission from requiring the incumbent to provide access to network elements that are superior in quality than

⁴ *Advanced Service Order*, at ¶ 52.

⁵ *Id.*, at ¶ 53.

⁶ *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *cert. granted on other grounds sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998) ("*Iowa Utilities Board*").

what the ILEC provides to itself, and therefore, the Commission could not require the ILECs to provide conditioned loops.⁷

SBC's and Bell Atlantic's arguments do not warrant reconsideration of the loop conditioning requirement of the *Advanced Services Order* because the loop conditioning requirement does not constitute an obligation to construct "yet unbuilt superior" networks.⁸ In the Eighth Circuit decision, the Court did not prohibit the Commission from requiring ILECs to modify certain unbundled network elements ("UNEs") if the modification did not require the building of new networks. Instead, the Court expressed concern that Section 251(c)(3) only required the ILECs to grant access to its existing network, not to a yet unbuilt superior one.⁹ The Court reasoned that the ILECs are not required to provide access to unbundled network elements that are superior to the ones in the ILEC-existing networks.¹⁰

The conditioning of loops does not constitute the building of new networks because loops are part of the existing network, and loop conditioning is an everyday aspect of providing a variety of services over the local loop. ILECs add to, or remove from, loops a variety of devices on a continuing basis in order to provide adequate service. ILECs also perform precisely the type of conditioning required to provide advanced services -- cleaning-up loops so that they are not encumbered with devices that interfere with provision of advanced services -- in order to

⁷ SBC Petition, at 4; Bell Atlantic Petition, at 3.

⁸ 120 F.3d at 813.

⁹ *Iowa Utilities Board*, 120 F.3d, at 813.

¹⁰ *Id.*

provide other services such as some private line and ISDN services. Thus, the requirement that ILECs provide conditioned loops does not rise to the level of the more far reaching requirement that ILECs provide superior quality UNEs that concerned the Eighth Circuit.

Moreover, SBC and BA incorrectly contend that the Commission has required ILECs to provide loops that are "superior in quality" to the loops provided to themselves. To the contrary, the Commission required ILECs to provide CLECs with conditioned loops regardless of whether the ILEC offers advanced services over the loop. Whether the ILEC provides advanced services over the loop, however, does not necessarily relate to the quality of the loop. The Commission's statement correctly means only that ILECs must provide the UNE in question in this case -- conditioned loops -- regardless of whether the purchaser intends to use them for a service that is not provided by the ILEC. This merely restates the determination in the *Local Competition Order* that new entrants may use UNEs to provide any telecommunications service.¹¹

In any event, it is evident that ILECs must provide conditioned loops to CLECs even if the Commission accepts SBC's and BA's view that under Section 251(c)(3) they must provide conditioned loops only if they provide them to themselves since they are, in fact, conditioning loops in their own provision of service. As explained previously, loop conditioning is an ordinary part of providing service over the loop. Loops conditioned by removal of all interfering devices already exist in the network and are used in the provision of ISDN service and some private line services. In addition, it is clear that incumbents are, or soon will be, providing

¹¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd, 15499 at ¶ 292. (1996) (*Local Competition Order*), vacated in part, *aff'd in part*, Iowa Utils. Bd. v. FCC, *supra*.

advanced services and that they will need to use conditioned loops to do so.¹² ILECs must provide loop conditioning to CLECs because they are providing it to themselves.

II The Commission Correctly Refrained From Forbearing Under Section 706

SBC and BA also claim that the Commission incorrectly determined that it lacked forbearance authority under Section 706.¹³ Specifically, the SBC and BA claim that the forbearance authority granted under Section 706 is not dependent on the forbearance standards listed in Section 10(a). These are not new arguments, and the Commission should reject them once again.

As the Commission determined in its *Advanced Service Order*, Section 706(a) does not require regulatory forbearance with regard to advanced services.¹⁴ Indeed, the statute merely directs the Commission to encourage the deployment of advanced services by utilizing, among other tools, regulatory forbearance. Section 10 of the Communications Act is the statute that provides the authority to use regulatory forbearance and section 10(d) expressly prohibits the Commission from forbearing from the requirements of sections 251(c) and 271 until it determines that the requirements have been fully implemented.¹⁵ The Commission correctly concluded that it is implausible to believe that Congress would specifically carve out sections

¹² ILECs are deploying xDSL and other advanced services throughout the United States. *Advanced Services Order*, para 10 (incumbent wireline carriers are today at the early stages of deploying advanced services).

¹³ SBC Petition, at 509; Bell Atlantic Petition, at 6.

¹⁴ *Advanced Service Order*, at ¶66.

¹⁵ *Id.* at ¶ 67.

251(c) and 271 when permitting regulatory forbearance pursuant to Section 10(d) but would permit eviscerating those rules under Section 706.

Moreover, the Commission correctly recognized the policy behind the 1996 Act in determining that Section 706 could not have been an independent grant of forbearance authority when the broader statutory scheme and underlying policy objectives of the 1996 Act are considered.¹⁶ Plainly, the cornerstone of the 1996 Act is the opening of the local exchange markets to competition, for which section 251(c) and 271 are essential. As the Commission so aptly noted, the words of Section 706 taken out of context do not provide sufficient support for the illogical conclusion that Congress would explicitly direct that the requirements of Sections 251(c) and 271 not be lifted, but yet permit forbearance of those cornerstone sections with the general language of Section 706.¹⁷


¹⁶ *Id.* at ¶ 71.

¹⁷ *Id.*

III. CONCLUSION

For the foregoing reasons, CTSI respectfully requests that the Commission affirm on reconsideration that the ILECs must provide conditioned loops on request to CLECs and that it lacks authority under Section 706 of the 1996 Act to grant forbearance to the ILECs from application of Sections 251(c) and 271. The Commission should deny the Petitions for Reconsideration.

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CERTIFICATE OF SERVICE

I, Jolanda Tedford, hereby certify that on this 5th day of October 1998, copies of the foregoing Opposition of CTSI, Inc. was hand delivered to the parties listed below.

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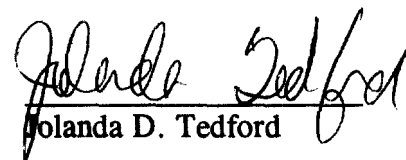
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